Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

VERN T. JORDAHL, MARY-BETH LAROCK, and VIRGINIA LEADERSHIP COUNCIL,

Petitioners,

v.

DEMOCRATIC PARTY OF VIRGINIA, RICHMOND CITY DEMOCRATIC COMMITTEE, and COMMONWEALTH OF VIRGINIA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER PETITIONERS' FIRST AMENDMENT CHALLENGE TO VA. CODE §§ 24.2-908, 24.2-910, 24.2-1014, AND 8.01-620 IS EITHER MOOT OR IS NOT YET RIPE WHEN SUCH CHALLENGE IS BASED UPON PRIOR VERSIONS OF THE STATUTES AND WHEN THE STATUTES, IN THEIR PRESENT FORMS, HAVE NEVER BEEN APPLIED AGAINST THE PETITIONERS AND ARE NOT LIKELY TO BE APPLIED AGAINST THEM IN THE FUTURE?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Fourth Circuit were:

1. Vern T. Jordahl, Mary-Beth LaRock, and the Virginia Leadership Council, Plaintiffs, Petitioners herein.
2. Democratic Party of Virginia and Richmond City Democratic Committee, Defendants, Respondents herein.
3. Commonwealth of Virginia, Intervener, Respondent herein.

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STATEMENT OF THE CASE

The Petitioners seek a Writ of *Certiorari* from his Court granting appellate review of a decision of the United States Court of Appeals for the Fourth Circuit ("the Fourth Circuit"). The Fourth Circuit's decision affirmed an order of the United States District Court for the Western District ("the Western District") which dismissed the Petitioners' Amended Complaint.

In Count One of their Amended Complaint, the Petitioners alleged that Va. Code §§ 24.2-908, 24.2-910, 24.2-1014 and 8.01-620, when applied together in a particular manner, create an unconstitutional system of prior restraints.[1] Sections 24.2-908, 24.2-910 and 24.2-1014, are provisions within Virginia's Campaign Finance Disclosure Act ("the Act"), all of which were amended substantially in 1996. Section 8.01-620 is Virginia's basic injunction statute. Simply stated, this provision gives general authority to Virginia's Circuit Courts to award injunctions.

Interestingly, the Petitioners in this case have not directly attacked the facial constitutionality of the Act. Instead, the Petitioners sought a judgment from the Western District declaring Virginia's statutory "scheme" unconstitutional and enjoining the Democratic Party of Virginia and the Richmond City Democratic Committee [hereinafter referred to as "DPV"] from enforcing these provisions against them in the future. In support of this

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[1] Count One of the Petitioners' Amended Complaint is reprinted as part of the Appendix to this Brief in Opposition ("App.") at App. at 1.

aspect of their claim, the Petitioners alleged that in 1989 and in 1993, DPV sought and obtained injunctions against them based upon *prior* versions of the Act and pursuant to Va. Code § 8.01-620.

Upon being advised that the Petitioners' lawsuit appeared to call into question the constitutionality of Virginia statutes, the Commonwealth of Virginia ("Commonwealth") filed a Motion to Intervene in the Western District. The Western District granted this motion. Three days after granting the Commonwealth's Motion to Intervene, the Western District granted DPV's Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Petitioners appealed the Western District's decision to the Fourth Circuit and the Fourth Circuit affirmed the Western District's dismissal of the Petitioners' Amended Complaint.

Throughout the proceedings below, the Commonwealth's participation in this case has been limited to the Petitioners' challenge to the constitutionality of the "scheme" set forth in Va. Code §§ 24.2-908, 24.2-910, 24.2-1014 and 8.01-620. Likewise, this Brief in Opposition will address only the Petitioners' constitutional challenge to these provisions and not the other aspects of the Petitioners' Amended Complaint against DPV.

SUMMARY OF ARGUMENT

Contrary to the assertions made within the Petitioners' Petition for Writ of *Certiorari*, the Western District's dismissal of Count One of the Petitioner's Amended Complaint and the Fourth Circuit's decision to

affirm the Western District's dismissal do not conflict with prior decisions of this Court or with the decisions of other circuits. Instead, when affirming the Western District's dismissal of Count One, the Fourth Circuit applied well-recognized and, with respect, relatively basic principles of law regarding mootness and a lack of justiciable case and controversy. By applying these basic principles, the Fourth Circuit correctly concluded that the Petitioners failed to present an actual case and controversy within Count One of their Amended Complaint. Accordingly, the Fourth Circuit did not err when it dismissed this portion of the Petitioners' claim. Perhaps even more importanly, this Court should decline to award a Writ of *Certiorari* associated with the Fourth Circuit's ruling since it is clear that the Petitioners' claim is purely speculative.

REASONS FOR DENYING WRIT

Introduction

The Fourth Circuit correctly recognized that the Petitioners did not present a justiciable case and controversy within Count One of their Amended Complaint. In Count One, the Petitioners did not mount a direct challenge to the facial constitutionality of the Act as it currently exists. Petitioners' Appendix ("PetApp.") at 22-23. Instead, the Petitioners alleged that the Act, *if* and when *applied* pursuant to Va. Code § 8.01-620, is unconstitutional. App. at 1-2. Under the circumstances, the Western District and the Fourth Circuit properly concluded that, under the Petitioners' own characterization of their claim, they asserted only an as applied challenge to the Act, as

opposed to a valid facial challenge.[2] The Fourth Circuit also properly concluded that such a challenge is not justicible and inappropriate for judicial consideration because it is based upon the manner in which earlier versions of the Act were applied against the Petitioners and since the possibility of any future application against the Petitioners is purely speculative.

I. The Petitioners' Claim Is Moot.

As noted above, the Petitioners' challenge to Va. Code §§ 24.2-908, 24.2-910, 24.2-1014, and 8.01-620 is based upon the manner in which prior versions of these statutes were applied against them in 1989 and 1993. It is clear, therefore, that the claim which the Petitioners attempted to state within Count One of their Amended Complaint has become moot to the extent that it is based upon the versions of these statutes which were in existence in 1989 and 1993.

Under the circumstances, this Court should refuse to grant a Writ of *Certiorari* to the Petitioners because of the mootness of their claim. *United States Department of Justice v. Provenzano*, 469 U.S. 14 (1984). *See also Richardson v.*

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[2] This factor distinguishes the Petitioners' constitutional challenge from that of the plaintiffs in *VSHL v. Caldwell* (Civ. A. No. 95-1042-R, U.S.D.C., W.D. Va., Final Order entered February 19, 1997), a case referred to by the Petitioners in their Petition for Writ of *Certiorari*. In the *Caldwell* case, the plaintiffs challenged the facial constitutionality of the current version of the Act. App. at 4-13. The Western District ultimately concluded that the current version of the Act *does not* violate the constitution of the United States and dismissed the plaintiffs' claim.

Ramirez, 418 U.S. 24, 36 (1974) (recognizing that "purely practical considerations have never been thought to be controlling by themselves on the issue of mootness in [the U.S. Supreme Court]. While the Supreme Court of [a state] may choose to adjudicate a controversy simply because of public importance, and the desirability of a statewide decision, we are limited by the case-or-controversy requirement of Art. III to adjudication of actual disputes between adverse parties."); *Mills v. Green*, 159 U.S. 651, 653 (1895) (the refusal of the Court to consider matters which have become moot arises from the common law concept that the function of the judiciary is to resolve actual controversies).

II. The Petitioners' Challenge Is Not Ripe.

The Fourth Circuit did not err when it reasoned that the Petitioners cannot support their First Amendment challenge to the Act and Virginia's general injunction statute by relying upon the manner in which statutes have been applied against them in the past since the challenged portions of the Act have been subsequently amended and re-enacted by Virginia's General Assembly and since, perhaps more importantly, the current version of the Act has *never* been applied against the Petitioners in the manner described within their Amended Complaint. There is simply nothing in the record of this case to support the Petitioners' contention that the statutes are likely to be enforced against them by DPV in the future. Furthermore, contrary to the Petitioners' contentions, the fact that DPV obtained three injunctions against the Petitioners more than four years ago in Virginia Circuit Courts, before the Act was amended in 1996, does not

establish an unconstitutional pattern of enforcement against the Petitioners which is likely to continue at this time.[3]

Moreover, again contrary to the Petitioners' contentions, there is *nothing* within in the Fourth Circuit's decision regarding justiciability which indicates that the Fourth Circuit viewed the post-application amendments to the Act as immaterial. *See Petition for Writ of Certiorari* at 15. In actuality, a review of the prior versions of the Act as compared to the current version of the statute reflects that numerous *substantive* changes to the Act have been made since 1989 and 1993 (Pet.App. at 58-81) and supports the logical conclusion that the Fourth Circuit found the amendments to be material.[4]

The Petitioners' reliance upon a *preliminary* ruling of the Western District in the case of *VSHL v. Caldwell*, 906 F. Supp. 1071 (W.D.Va. 1995), reprinted at PetApp. 1 [hereinafter referred to as "the 1995 Opinion"], as support for their contention that the Act has not been substantively amended since 1993, is also misplaced. The Petitioners fail to mention that the 1995 Opinion merely constituted an attempt of the Western District to protect the rights of

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[3] This is particularly true since, as admitted by the Petitioners, when the decision to award one of the injunctions was appealed to the Supreme Court of Virginia, Virginia's highest court chose to vacate the injunction. *Petition for Writ of Certiorari* at 6, n.3.

[4] The Fourth Circuit also recognized that Virginia's General Assembly had amended the challenged provisions "to narrow their reach." PetApp. at 23, n.11. This statement within its decision reflects that the Fourth Circuit found the amendments to be "material."

the plaintiffs in *VSHL* pending a *final* decision regarding the facial meaning and constitutionality of the Act. App. at 6. The 1995 Opinion *did not* constitute a final decision of the Western District with respect to the meaning of the challenged provisions or the effect of any amendment thereto.

Regardless, the Western District ultimately found the *1996 version* of the Act, and in particular, Va. Code §§ 24.2-908, 24.2-910, 24.2-1014, to be constitutional. App. at 5. By way of summary, the Western District concluded that these provisions can and should be construed in a constitutional manner, particularly in light of the recent amendments to the Act reflecting an attempt on the part of the Virginia General Assembly to comply with the directives of this Court as set forth in *Buckley v. Valeo*, 424 U.S. 1 (1976). App. at 7.

The Petitioners' claim also presumes that in the future Virginia's courts *may* apply the new statutes against them in an *ex parte* manner so as to constitute an unconstitutional prior restraint. This challenge is purely speculative and does support this Court's appellate review of the Fourth Circuit's decision. As noted by this Court in *Renne v. Geary*, 501 U.S. 312, 321 (1991), and as recognized by the Fourth Circuit in this case, "[p]ast exposure to illegal conduct does not itself show a present case or controversy. . . . " *See also Los Angeles v. Lyons*, 461 U.S. 95, 111-12 (1983); *Public Affairs Press v. Rickover*, 369 U.S. 111, 112 (1962) ("We have cautioned against declaratory judgments on issues of public moment, even falling short of constitutionality, in speculative situations"); *Hartford-Empire Co. v. United States*, 323 U.S. 386, 410

(1945) ("a decree cannot be entered enjoining all possible breaches of the law").

Stated somewhat differently, the mere fact that Virginia's injunction statute grants broad enough discretion to Virginia's Circuit Courts so as to allow for the *possibility* that a judge will apply his injunctive authority in an unconstitutional manner does not mean that Va. Code § 8.01-620, when read together with the challenged portions of the Act, is facially unconstitutional. Nor does such a purely speculative claim warrant appellate review by this Court. *Renne v. Geary*, 501 U.S. at 321. *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574 (1992) (to establish standing, a plaintiff must show a realistic danger of sustaining injury in fact, as opposed to a merely conjectural or hypothetical injury).

CONCLUSION

For the foregoing reasons, the Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

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APPENDIX

* * *

COUNT I

Section 1983 Claim by Jordahl, LaRock and VLC Against DPV, Warner, Bell, Framme, Roberts, and RCDC for Declaratory and Injunctive Relief

62. Paragraphs 1-61 above are incorporated by reference as if set forth here at length.

63. Va. Code §§ 24.2-908, 24.2-910, 24.2-1014 are the recodified versions of Virginia election laws enforced against Jordahl, LaRock, VLC and others by the DPV, Warner, Bell, Framme, Roberts and RCDC under color of law with injunctions in the 1989 Richmond Action, 1989 Fairfax Action, and the 1993 Fairfax Action.

64. Va. Code §§ 24.2-908 and 24.2-910, in combination, require that "persons" and "political committees" that expend in excess of $500 in statewide elections of $100 in other elections "for the purpose of influencing the outcome" of such elections or for the purpose of publishing or broadcasting to the public "any material referring to a candidate by name, description, or other reference and (i) advocating his election or defeat; (ii) setting forth his position on any public issue, voting record, or other official acts, or (iii) otherwise designed to influence individuals to cast their votes for or against him or to withhold their votes from him" must file certain statements of organization and disclosure reports with the State Board of Elections.

65. Va. Code § 24.2-1014(B) provides that it is unlawful for any person to cause to appear "any writing

. . . concerning any potential nominee or candidate . . . unless such writing plainly identifies the person responsible for it." Section 24.2-1014(B)(3)(a) further requires that such writings published by "committees" that have filed statements of organization under § 24.2-908 shall contain the full name of the committee and a registration number provided by the State Board of Elections. Section 24.2-1014(B)(3)(b) further requires that writings published by all other persons not a candidate, campaign committee, or political party committee contain the "full name and residence address of the individual responsible for the writing."

66. Va. Code § 8.01-620 provides that Virginia circuit courts shall have jurisdiction to award injunctions, and was the basis for the injunctive relief obtained by the DPV and others in the 1989 Richmond Action, the 1989 Fairfax Action, and the 1993 Fairfax Action for alleged violations of the predecessor statutes to Va. Code §§ 24.2-908, 24.2-910, and 24.2-1014(B)(3).

67. Enforcement of Va. Code §§ 24.2-908, 24.2-910, 24.2-1014(B)(3) by injunctions pursuant to Va. Code § 8.01-620 that prohibit the distribution of written materials by persons and committees allegedly subject to §§ 24.2-908, 24.2-910, and 24.2-1014(B)(3) until such persons and committees comply with such laws constitutes a system of prior restraints of protected political speech in violation of the First Amendment to the U.S. Constitution.

WHEREFORE, Plaintiffs Jordahl, LaRock, and VLC respectfully request the Court:

(a) Declare, pursuant to Fed. R. Civ. P. 57, 42 U.S.C. § 1983, and 28 U.S.C. § 2201, that Va. Code §§ 24.2-908, 24.2-910, and 24.2-1014(B)(3), when enforced pursuant to Va. Code § 8.01-620 by injunctions that restrain speech, constitute in combination a system of prior restraints of protected political speech in violation of the First Amendment;

(b) Permanently enjoin, pursuant to Fed. R. Civ. P. 65, 42 U.S.C. § 1983, and 28 U.S.C. 2202, DPV, Warner. Bell, Framme, Roberts, and RCDC from instituting, seeking, or procuring injunctions under color of Va. Code § 8.01-620 that restrain speech of persons and committees allegedly in violation of Va. Code §§ 24.2-908, 24.2-910, and 24.2-1014(B)(3).

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

VIRGINIA SOCIETY FOR HUMAN LIFE, INC., et al.,	)	Civil Action No. 95-1042-R
Plaintiffs,	)	**FINAL ORDER**
v.	)	(Filed Feb. 19, 1997)
DONALD S. CALDWELL, et al.,	)	
Defendants.	)	

In accordance with the Memorandum Opinion entered on this day, it is hereby **ORDERED** and **ADJUDGED** that plaintiffs' request for declaratory and injunctive relief be and hereby is denied and that this matter be stricken from the docket of the court.

ENTERED this 19th day of February, 1997.

/s/ Samuel G. Wilson
UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTE:
MORGAN E. SCOTT, JR.,
CLERK
BY: /s/ E. Holland
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

VIRGINIA SOCIETY FOR HUMAN LIFE, INC., et al.,	)	Civil Action No. 95-1042-R
Plaintiffs,	)	
v.	)	**MEMORANDUM OPINION**
DONALD S. CALDWELL, et al.,	)	**By Samuel G. Wilson United States District Judge**
Defendants.	)	(Filed Feb. 19, 1997)

Plaintiffs, Virginia Society for Human Life, Inc. ("VSHL") and Andrea Sexton, bring this action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 for infringement of their First and Fourteenth Amendment rights to freedom of speech. Plaintiffs maintain that various provisions of Virginia's Campaign Finance Disclosure Act, Va. Code Ann. §§ 24.2-901 to 24.2-1014 (Michie 1996), are overly broad and chill their free speech. They seek a declaratory judgment that Va. Code §§ 24.2-908, 24.2-910 and 24.2-1014 are unconstitutional both on their face and as applied and a permanent injunction against enforcement of the statute. Defendants contend that the challenged provisions do not apply to VSHL and Sexton and that the relief sought should be denied. The court concludes that the challenged provisions do not apply to persons and organizations, such as plaintiffs, that do not engage in express candidate advocacy and that plaintiffs lack standing to challenge the provisions further.

I

VSHL is a nonprofit, nonstock, public interest, tax-exempt corporation that purportedly engages in "issue advocacy" in Virginia through the preparation and distribution of voter guides comparing the positions of the major parties' candidates. Sexton is a Virginia resident who distributes these guides in Virginia at her own expense. Defendants are the Virginia Commonwealth's Attorneys and the members of the State Board of Elections who enforce Virginia's election laws. Plaintiffs originally brought suit in October 1995. They wanted to distribute voter guides in connection with the 1995 state general elections but feared civil and criminal penalties because, in previous election years, Virginia's circuit courts had applied Virginia's election laws to prohibit the distribution of similar voter guides. *See Jordahl v. The Democratic Party of Va.*, 947 F. Supp. 236 (W.D. Va. 1996).

On October 21, 1995, this court issued a preliminary injunction prohibiting any enforcement of certain portions of Va. Code § 24.2-1014 and prohibiting enforcement of §§ 24.2-908 and 24.2-910 against plaintiffs, except as to contributions and expenditures for express candidate advocacy. *See Va. Society for Human Life v. Caldwell*, 906 F. Supp. 1017 (W.D. Va. 1995). The court found that those provisions arguably applied to plaintiffs and were potentially overbroad and that the balance of the harms favored plaintiffs, justifying a preliminary injunction pending final judgment on the merits. Believing that issues of state statutory construction are most appropriately determined by state courts, the court certified controlling questions of statutory interpretation to the Virginia Supreme Court. The Virginia Supreme Court,

however, rejected the certified questions on January 18, 1996.

The Virginia General Assembly amended the challenged provisions in May 1996. *See* Act of May 6, 1996, ch. 1042. Plaintiffs claim that the amended statutes are "identical in all legally relevant respects" to the previous provisions. Pls.' Br. Supp. Mot. Summ. J. (Second), at 4. They filed an Amended Verified Complaint challenging the amended statutes on the same grounds as the original complaint and requesting similar declaratory and injunctive relief.

II

Because the challenged statutes arguably apply to plaintiffs' activities and potentially chill their First and Fourteenth Amendment freedoms they have standing to bring this § 1983 suit. However, the court concludes that the challenged provisions apply only to persons and organizations that engage in express candidate advocacy as it has been defined by the United States Supreme Court. *See Buckley v. Valeo*, 424 U.S. 1, 79-80 (1976). According to plaintiffs' own description, VSHL does not engage in any express candidate advocacy;[1] That is, VSHL's voter guides do not "expressly advocate the election or defeat" of candidates, and VSHL neither receives contributions or makes expenditures for express advocacy. *Id.* at 80. Because the plaintiffs do not engage in

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[1] Indeed, defendants agree that plaintiffs engage only in issue advocacy and argue, therefore, that the statute in question does not apply to them.

express advocacy, the challenged provisions do not apply to them and they lack standing to challenge the provisions further.[2]

A. Va. Code Ann. § 24.2-908

Section 24.2-908 requires "each political committee" which anticipates receiving "contributions" or making "expenditures" in excess of $200.00 in a calendar year to file a "statement of organization" with the State Board of Elections. "Political committee" is defined, in effect, to include organizations, persons, or groups of persons which receive contributions or make expenditures *"for the purpose of influencing the outcome of an election."* Va. Code

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[2] The question of standing essentially turns on whether plaintiffs have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *See Baker v. Carr*, 369 U.S. 186, 204 (1962). Plaintiffs have alleged that the challenged provisions chill their exercise of their free speech rights. This chilling effect gives plaintiffs a sufficient stake to challenge the application of the statute to them. When, however, the court finds that the statute does not apply to plaintiffs, plaintiffs no longer suffer a threat of harm, and they lack sufficient personal stake in the outcome of the controversy to challenge the provisions further. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230-34 (1990) (holding that plaintiffs lacked standing because they failed to show they were subject to challenged provisions); *Laird v. Tatum*, 408 U.S. 1, 11-14 (1972) (holding that chilling effect cannot substitute for standing requirement of actual or threatened injury). It would be improvident for the court to decide constitutional questions intertwined with the political process when those questions are not necessary to the resolution of plaintiffs' claims.

§ 24.2-901(A) (emphasis added). As discussed below, the phrase "for the purpose of influencing" is a term of art whose well-established meaning excludes issue advocacy. *See Buckley*, 424 U.S. at 79-80.[3] Section 24.2-908, therefore, does not apply to plaintiffs' activities.

In *Buckley*, the United States Supreme Court narrowly construed the language "for the purpose of influencing" contained in the Federal Election Campaign Act, by tying that language to a major purpose of the Act's disclosure provision – "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.* at 80. The Court thereby avoided the Act's application to "groups engaged purely in issue discussion." *Id.* at 79. By avoiding the Act's application to groups engaged purely in issue advocacy, the Court saved the Act from potential unconstitutional overbreadth.

Plaintiffs now suggest that this court reject *Buckley's* interpretation of the phrase and choose instead an interpretation that would render the Virginia statute unconstitutional. Following plaintiffs' suggestion, however,

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[3] *See also Federal Election Comm'n v. Mass. Citizens for Life*, 479 U.S. 238, 249 (1986); *Federal Election Comm'n v. Central Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 53 (2d Cir. 1980) (Reading the term "expressly advocating" more broadly "would, by statutory interpretation, nullify" the holding of *Buckley*.); *Federal Election Comm'n v. Christian Action Network*, 894 F. Supp. 946, 951-958 (W.D. Va. 1995) (surveying cases adopting "a strict interpretation of [*Buckley's*] 'express advocacy' standard"; broader construction "would open the very Pandora's Box which the Supreme Court consciously sought to keep closed").

would violate two fundamental principles of statutory construction. First, it is well-established that "when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that a construction which will save the statute from constitutional infirmity." *United States ex rel. Attorney General of the United States v. Delaware & Hudson Co.*, 213 U.S. 366, 407 (1909); *See also Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Constr. Trades Council*, 485 U.S. 568, 575 (1988) (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895) ("[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality."). Second, a term of art generally must be given its customary meaning. When the General Assembly enacted and later amended § 24.2-908, it presumably was aware of *Buckley*'s construction of the phrase "for the purpose of influencing" to include only express candidate advocacy. The General Assembly intended, therefore, for the phrase to have that customary, narrow meaning. It follows that not only is § 24.2-908 reasonably susceptible to that narrow construction but, in light of *Buckley*, that narrow construction is the statute's best construction. VSHL is, accordingly, not a "political committee" subject to § 24.2-908 and has no standing to challenge that section further.

B. Va. Code Ann. § 24.2-910

Under § 24.2-910(A), a political committee required to file a statement of organization under § 24.2-908 is also required to maintain records and file disclosure reports. Since VSHL is not a political committee and is not

required to file a statement of organization under § 24.2-908, § 24.2-910(A) does not require it to maintain records and file disclosure reports.

Under § 24.2-910(B), a person who makes "independent expenditures" in excess of $500.00 for a state-wide election or $200.00 for any other election is required to maintain records and file disclosure reports of those "independent expenditures." An "independent expenditure" is an "expenditure" not made to, controlled by, coordinated with, or made upon consultation with a candidate. Va. Code § 24.2-901. "Expenditure" in turn, is defined, to include money, services, or anything of value given "for the purpose of influencing the outcome of an election." Va. Code § 24.2-901. In using this definition, the General Assembly limited the application of § 24.2-910 to expenditures for express candidate advocacy.[5] Since, by their own account, plaintiffs do not engage in express candidate advocacy, § 24.2-910(B) does not require them to maintain records or file disclosure reports, and they lack standing to challenge § 24.2-910 further.

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[5] [The Western District appears to have inadvertently omitted footnote 4.] VSHL contends that § 24.2-910(B) is not limited to expenditures for express candidate advocacy and improperly requires it to file disclosure reports. The court would agree were it not for the fact that the language of § 24.2-910 is limited to "independent expenditures." Funds expended for the purposes detailed in § 24.2-910(B)(2) are reportable only if they also qualify as "independent expenditures."

C. Va. Code Ann. § 24.2-1014

Va. Code § 24.2-1014(B) makes it "unlawful for any person to cause any writing . . . to appear concerning any clearly identified candidate unless such writing plainly identified the person responsible for it." A "writing" is defined in § 24.2-1014(A) as "any printed or otherwise reproduced statement or advertisement made for the purpose of influencing the outcome of an election. . . . " As with §§ 24.2-908 and 24.2-910, plaintiffs' broad construction of the phrase "for the purpose of influencing the outcome of an election" would subject their voter guides to the identification requirement. The court again rejects their construction and instead interprets the phrase "for the purpose of influencing the outcome of an election" as a term of art that includes only express candidate advocacy. Since plaintiffs do not engage in express candidate advocacy, § 24.2-1014(B) does not apply to them and they lack standing to challenge the statute further.

III

For the reasons stated, the court concludes that the challenged provisions of Va. Code §§ 24.2-908, 24.2-910 and 24.2-1014 are limited to express candidate advocacy. Because plaintiffs engage only in issue advocacy, the statute does not apply to them and the court will dismiss their challenges for lack of standing.

An appropriate order will issue.

ENTER this 19th day of February, 1997.

/s/ Samuel G. Wilson

UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTE:
MORGAN E. SCOTT, JR., CLERK
BY: /s/ E. Holland
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